

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>04-C-13056</b> ; 05-C-01324 (Cons.)
	)	
<b>KIRK CONRAD CHAMBERLIN,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 132946,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

INTRODUCTION

In these consolidated conviction referral proceedings, respondent Kirk Conrad Chamberlin (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation for three years subject to certain conditions, including a 30-day period of suspension (with credit given for the period of inactive enrollment under Business and Professions Code section 6233).<sup>1</sup>

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<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

## **PERTINENT PROCEDURAL HISTORY**

After the transmittal to the State Bar Court of the records of respondent's conviction, the Review Department of the State Bar Court issued an order in case no. 04-C-13056 on October 13, 2004, referring respondent's non-final misdemeanor conviction for violating Penal Code section 272(a)(1) [contributing to the delinquency of a minor] to the Hearing Department of the State Bar Court for certain action.

A Notice of Hearing on Conviction was filed against respondent in case no. 04-C-13056 on October 26, 2004, and the matter was assigned to the Honorable Pat McElroy.

Respondent contacted the State Bar's Lawyer Assistance Program (LAP) on or before October 26, 2004, to assist him with his substance abuse issues.<sup>2</sup>

After the Review Department received notice of the finality of respondent's conviction, the Review Department issued an order on November 9, 2004, in case no. 04-C-13056, augmenting its earlier reference to include a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding the offense of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

On November 30, 2004, Judge McElroy referred case no. 04-C-13056 to the ADP<sup>3</sup> before the undersigned judge.

Respondent signed a LAP Participation Plan on December 23, 2004.<sup>4</sup>

After the transmittal to the State Bar Court of the records of respondent's conviction, the Review Department of the State Bar Court issued an order in case no. 05-C-01324 on April 8,

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<sup>2</sup> Although respondent has also been diagnosed with a mental health issue, it appears that but for respondent's substance abuse issues, the misconduct would likely not have occurred.

<sup>3</sup> The ADP was previously known as the Pilot Program for Respondents with Substance Abuse or Mental Health Issues.

<sup>4</sup> Respondent's Participation Plan was thereafter amended on at least one, and possibly, two, occasions.

2005, referring respondent's non-final misdemeanor conviction for violating Penal Code section 273.5(a) [infliction of corporal injury on spouse] to the Hearing Department of the State Bar Court for certain action.

A Notice of Hearing on Conviction was filed against respondent in case no. 05-C-01324 on April 15, 2005, and the matter was assigned to the undersigned.

On June 7, 2005, the court filed an order consolidating case nos. 04-C-13056 and 05-C-01324.

In furtherance of his participation in the ADP, on July 15, 2005, respondent submitted a declaration to the court, which established a nexus between respondent's substance abuse issues and his misconduct in these matters.

On July 20, 2005, the court filed an order noting that in case no. 05-C-01324, the parties, on the record, waived the finality of the conviction.

In September 2005, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case nos. 04-C-13056; 05-C-01324 (Cons.), which was received by the court on September 9, 2005. The Stipulation sets forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter.<sup>5</sup>

After the Review Department received notice of the finality of respondent's conviction, the Review Department issued an order on October 17, 2005, in case no. 05-C-01324, augmenting its earlier reference to include a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding the offense of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

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<sup>5</sup> In the Stipulation, respondent waived finality of his conviction.

Following briefing by the parties in November 2005, the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to the alternative possible dispositions, the court memorialized in writing these alternative dispositions in a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement); respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court signed an order approving the parties' Stipulation, as modified; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on January 19, 2006.

Respondent thereafter participated in both the LAP and the State Bar Court's ADP. Respondent, however, had a difficult period of rehabilitation in the LAP. He was terminated on several occasions between February 2007 and January 2009.<sup>6</sup> In each case, however, respondent immediately sought treatment outside of the LAP for his condition and continued to actively participate in the ADP without interruption. Each time respondent was terminated from the LAP he was permitted to re-enroll in the LAP after meeting certain requirements.

Effective February 22, 2008, respondent was involuntarily enrolled as an inactive member of the State Bar pursuant to section 6233. On March 19, 2008, the court filed an order terminating respondent's involuntary inactive enrollment pursuant to section 6233 effective March 24, 2008.

On December 23, 2009, the court filed an order extending respondent's participation in the ADP nunc pro tunc from February 17, 2009, until further order.

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<sup>6</sup> Although LAP termed these some of these actions as a withdrawal, in actuality, respondent was terminated from the LAP.

On October 18, 2010, after receiving a certificate from the LAP setting forth that the LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to July 29, 2010, the court filed an order finding that respondent has successfully completed the ADP and submitting this matter for decision on October 14, 2010.<sup>7</sup>

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The parties' Stipulation, including the court's order approving the Stipulation as modified, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

Regarding case no. 04-C-13056, respondent stipulated that the incidents occurred in late 2002 and early 2003 and involved a 13 year old girl (victim). The victim was often at respondent's house and spent time with respondent's family, including his four daughters. On various occasions during the time period in question, respondent had physical contact with the victim, including touching her buttocks, back and leg. The contact also included the victim sitting on respondent's lap and respondent kissing the victim. The circumstances of respondent's conviction included inappropriate contact with the victim through numerous conversations and email transmissions. On many occasions, respondent emailed the victim suggesting that they meet at various times or places. Furthermore, a number of these conversations and email transmissions were inappropriately suggestive.

In January 2003, the victim's mother intercepted an email transmission between respondent and the victim. The victim's mother told respondent to discontinue any further contact with the victim. However, in February 2003, the victim's mother again intercepted email transmissions between respondent and the victim, and the victim's mother reported the activity to law enforcement.

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<sup>7</sup> The parties' Stipulation was filed on October 14, 2010.

A felony criminal complaint was filed against respondent on November 24, 2003, charging that respondent willfully committed a lewd act(s) upon a child under the age of fourteen [Penal Code section 288(a)]. The complaint was amended on July 1, 2004 to add a misdemeanor violation of Penal Code section 272(a)(1) [contributing to the delinquency of a minor]. Respondent pleaded guilty to the misdemeanor count of contributing to the delinquency of a minor. The imposition of sentencing was suspended, and respondent was placed on formal probation for five years on conditions including, among others, that he serve 45 days in jail and comply with all rules and regulations of the Probation Department.

Thereafter, respondent technically violated the court's probation order by leaving California and Los Angeles County without the permission of his probation officer or the court. In August 2004, respondent's case was called before the criminal court for a probation violation. Respondent was represented by counsel at the hearing but was not present in court himself. The court revoked respondent's probation and ordered him to personally appear two days later. At that time, respondent was present in court and his probation was reinstated on the same terms and conditions, but the court admonished respondent regarding complying with probation guidelines regarding travel.

On August 1, 2005, respondent's matter was called for a probation violation hearing as a result of respondent's conviction discussed in case no. 05-C-01324. Respondent's probation was revoked and reinstated on the condition that he serve an additional 45 days in county jail and submit to drug testing.

With respect to case no. 05-C-01324, respondent stipulated that on September 17, 2004, respondent, his wife, and their two children were in their car driving home. When they stopped at an intersection, respondent and his wife were in the midst of a conversation regarding their

relationship when respondent became visibly angered. Respondent struck his wife in the face with his left hand causing visible injuries.

On or about March 28, 2005, respondent pleaded nolo contendere to a violation of Penal Code section 273(a), inflicting corporal injury on a spouse, a misdemeanor. On June 17, 2005, the court suspended the imposition of sentence for 36 months, and respondent was ordered to complete 30 days of CalTrans work and to attend a 12-month Batterer's Counseling Program.

Respondent stipulated that the facts and circumstances surrounding his convictions are other misconduct warranting discipline.

In aggravation, the parties stipulated that respondent's misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. (Std. 1.2(b)(ii).) The court, however, finds only multiple acts of wrongdoing as an aggravating circumstance, as there is no evidence of a pattern of misconduct.

In mitigation, respondent has no prior record of discipline. Respondent had practiced law for over 14 years at the time of his first act of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(i).)<sup>8</sup> Respondent also displayed spontaneous cooperation and candor to the victims of his misconduct and to the State Bar during the disciplinary investigation and proceedings. (Std. 1.2(e)(v).) In addition, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

## **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the

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<sup>8</sup> All further references to standard(s) or std. are to this source.

highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline to recommend if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, and 3.4 and *In re Duggan* (1976) 17 Cal.3d 416; *In re Fudge* (1989) 49 Cal.3d 643; *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52; *In re Otto* (1989) 48 Cal.3d 970; *In re Hickey* (1990) 50 Cal.3d 571; and *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

Because Respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of disposition, set forth more fully below.

## **DISCIPLINE**

### **Recommended Discipline**

It is hereby recommended that respondent Kirk Conrad Chamberlin, State Bar Number 132946, be suspended from the practice of law in California for two (2) years, that execution of that period of suspension be stayed, and that he be placed on probation<sup>9</sup> for a period of three (3) years subject to the following conditions:

1. Respondent Kirk Conrad Chamberlin is suspended from the practice of law for the first 30 days of probation (with credit given for inactive enrollment, which was effective February 22, 2008, through March 23, 2008 (Bus. & Prof. Code, § 6233).)

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<sup>9</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)



2. Kirk Conrad Chamberlin must also comply with the following additional conditions of probation:

- A. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
- B. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
- C. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
- D. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

- E. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- F. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of

attendance at a session of the Ethics School, and passage of the test given at the end of that session;

- G. Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation; and
- H. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

At the expiration of the period of probation, if Kirk Conrad Chamberlin has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

### **Multistate Professional Responsibility Examination**

It is not recommended that Kirk Conrad Chamberlin be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE), as he took and passed the August 2010 examination.

### **Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS**

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),<sup>10</sup> all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 (former rule 23) of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: March \_\_\_\_, 2011

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RICHARD A. HONN  
Judge of the State Bar Court

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<sup>10</sup> Effective January 1, 2011, new Rules of Procedure of the State Bar of California became effective.